ROSLEE SAFIE

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOF ABDUL RASHID J
[CRIMINAL APPEAL NO. 36 OF 1980]
25 NOVEMBER 1981

CRIMINAL PROCEDURE: *Section 4(a) of Prevention of Corruption Act 1961 - Corruptly accepting gratification - Acceptor police officer - Inducement - Promise to give favourable evidence for complainant charged for possession of heroin - Finding of facts by President on credibility of witness - Whether witnesses accomplices - Infamous part in transaction - Whether protected by s. 18 of the Act - Defence - Credibility of witnesses questionable - Whether evidence considered adequately.*

This case is an appeal against the decision of the Sessions Court to convict the appellant on two charges of corruptly accepting money, thereby comitting an offence punishable under s. 4(a) of the prevention of corruption Act 1961.

The appellant, a police officer, accepted an offer and later money as an inducement to settle a heroine case for one Mohamad Zakaria (PW1). With PW1 were his friends PW3 and PW9.

After the appellant accepted the offer of money and a small sum to be settled in full the following day from PW1, PW1 lodged a report at the office of Biro Siasatan Negera Johor Bahru. A trap was set for the appellant and the next day the appellant was arrested on being caught accepting money from PW1.

The learned President found the appellant guilty of the crime, and the witnesses PW1, PW3 and PW9 accomplices.

Held:

[1] (a) The appellate Court re-examined in detail the evidence adduced by the witnesses for the prosecution, and fully agree with the finding of facts by the President. The learned President had scrutinized the credibility of PW1, PW3 and PW9 and was in no doubt that these witnesses were accomplices in the normal sense and examined their evidence with all the care appropriate to their position.

(b) The learned President was fully justified in finding that the prosecution had established a *prima facie* case if unrebutted would warrant the appellant's conviction.

[2] The defence witnesses were called to discredit the evidence of the witnesses for the prosecution and the learned President having had the opportunity to observe them giving evidence in Court ruled that they were witnesses whose credibility was questionable. As a result the learned President found the defence had failed to raise any reasonable doubt as to the guilt of the appellant and accordingly convicted them. This was a finding of facts based on the credibility of witnesses and though the appellate Court has the jurisdiction to interfere, the Court had no reason to defer from the findings of the learned President.

[3] The learned President had carefully analysed the appellant's evidence in the light of the whole evidence of the defence and having weighed the evidence of the defence in the light of the evidence as a whole, he found that the defence had failed to rebut the presumption under s. 14 of the Prevention of Corruption Act 1961 on the balance of probabilities.

[4] As the learned President had not committed any error of law nor had he misdirected himself on the question of fact, the Court found that there was no merit in this appeal.

[Appeal dismissed.]

Cases referred to:
Daimon bin Banda v. Public Prosecutor [1953] MLJ 23
Abdul Hamid bin Mohamad v. Public Prosecutor [1953] MLJ 26
Yap Ee Kong & Anor. v. Public Prosecutor [1981] 1 MLJ 144

Legislation referred to:
Prevention of Corruption Act 1961, ss. 4(a), 14, 18

For the respondent - Suriyadi bin Halim Omar, DPP
For the appellant - Elyas Majeed

JUDGMENT

Yusof Abdul Rashid J:

This is an appeal from the decision of the Sessions Court Johor Bahru whereby the appellant was convicted on 2 charges of corruptly accepting for himself as a police officer from one Mohamad Zakaria bin Abdul Kamal 2 sums of money on different dates i.e. 22 December 1975 and 23 December 1975 as an inducement for doing an act in relation to his principal affairs, namely, promising to give favourable evidence for the complainant in connection with a Johor Bahru Sessions Court Case No.279/75 for which the appellant was the witness, thereby committing an offence punishable under s. 4(a) of the Prevention of Corruption Act 1961. The appellant was sentenced to one year's imprisonment for each charge, the sentence to run concurrently.

The prosecution case very briefly was that on 11 December 1975 about 8.30 p.m. Mohamad Zakaria was arrested by the appellant for possession of heroin. On the way to the police station Mohamad Zakaria made an offer to bribe the appellant so that the appellant would release him and would not lodge a report. The appellant rejected the offer, lodged the report and kept Mohamad Zakaria in the lock-up. On 14 December 1975 Mohamad Zakaria was charged in court for being in possession of heroin to which he pleaded guilty. The sentence was deferred to 30 December 1975.

On 21 December 1975 while Mohamad Zakaria was at the Johor Bahru taxi-stand, being released on bail pending sentence, he met a friend, Abu Bakar Sidek, who told him that the appellant wanted to see Mohamad Zakaria on the next day because the appellant wished to help him to settle the heroin case. Accordingly Mohamad Zakaria met the appellant on 22 December 1975 about 7.00 p.m. at the Johor Bahru taxi-stand. The appellant told Mohamad Zakaria that he would help him in the heroin case if Mohamad Zakaria agreed to pay RM300 to which Mohamad Zakaria agreed. The appellant then asked for an advance of RM50 but then Mohamad Zakaria had no money with him. However, the appellant gave him one hour to look for the money. Mohamad Zakaria tried to raise the money but failed. So he came back to the Johor Bahru taxi-stand.

At the Johor Bahru taxi-stand Mohamad Zakaria met the appellant, Abu Bakar Sidek and Abu Talip, another friend of Mohamad Zakaria. As soon as Mohamad Zakaria met them, he told the appellant that he had failed to raise the money. Abu Talip knew that the appellant had asked for RM300 from Mohamad Zakaria so that the appellant would drop the heroin

charge against Mohamad Zakaria because on the previous day Abu Bakar Sidek had told him about it. Mohamad Zakaria then asked Abu Talip for a loan of RM40 to enable him to pay the appellant. Abu Talip then went home and having got the RM40 from his wife gave the money to the appellant on behalf of Mohamad Zakaria. The appellant told Mohamad Zakaria to get the balance of the money by the next day.

On 23 December 1975 about 11.00 a.m. Mohamad Zakaria went and lodged a report at the office of Biro Siasatan Negara Johor Bahru. Mohamad Zakaria was told by the BSN officer to come back at 5.00 p.m. on that day to spring a trap on the appellant. Mohamad Zakaria handed 6 RM10 notes to Sapun bin Samsuddin a BSN officer, who recorded the serial number of the said notes. Having done so, the RM60 was handed back to Mohamad Zakaria who was told to hand the money to the appellant and a certain signal was arranged to show that the money had been passed to the appellant.

About 7.30 p.m. on 23 December 1975 Mohamad Zakaria met the appellant at the Johor Bahru taxi-stand. By then BSN officers were ready to effect the arrest as soon as the money had passed hands. S. Siva, a BSN officer, was all the time observing the movement of Mohamad Zakaria. When the signal was given S. Siva approached the appellant and identified himself as BSN officer. When effecting the arrest, S. Siva told the appellant that he was arrested for accepting bribe. The appellant was taken into an office at the taxi-stand where he was asked to empty all his pockets. The 6 RM10 notes were recovered from the trouser pocket of the appellant.

At the end of the case for the prosecution, the learned President being satisfied that there was a *prima facie* case against the appellant called the appellant to make his defence.

When the appeal came before me, I re-examined in detail the evidence adduced by the witnesses for the prosecution, and I fully agree with the finding of facts by the President. In my judgment the learned President was fully justified in finding that the prosecution had established a *prima facie* case if unrebutted would warrant the appellant's conviction.

The appellant gave evidence on oath and called several defence witnesses to give evidence in his favour. The defence was a total denial. The defence witnesses were called to discredit the evidence of the witnesses for the prosecution and the learned President having the opportunity to observe them giving evidence in court ruled that the defence had failed to raise any reasonable doubt as to the guilt of the appellant and accordingly convicted him. This is a finding of facts based on the credibility of witnesses and though as an appellate Court, I have jurisdiction to interfere I have no reason to defer from the findings of the learned President.

In the course of the appeal, the counsel for the appellant attacked the judgment of the learned President on two grounds and the ground that merits detailed consideration is whether the learned President had misdirected himself in his treatment of the evidence of Mohamad Zakaria, Abu Bakar Sidek and Abu Talip. The learned President had treated all of them as accomplices and had convicted the appellant on the evidence of these accomplices. The learned Deputy Public Prosecutor contended that these witnesses were not accomplices and cited the Court of Appeal cases of *Daimon bin Banda v. Public Prosecutor* [1953] MLJ 23 and *Abdul Hamid bin Mohamad v. Public Prosecutor* [1953] MLJ 26. In *Daimon's* case the Court of Appeal held that:

> ... In corruption cases, a person is no longer to be presumed unworthy of credit merely by reason of the fact that he has made or caused to have made an improper payment.
>
> If, however, he has taken some more infamous part in the transaction, for example actively corrupted the public officer into accepting the bribe, the new provision does not cover his testimony..

Different interpretation have arisen as to what constitutes "he has taken some infamous part in the transaction" depending on the facts of the case. In the instant appeal the learned President was of the view that Mohamad Zakaria (PW1) and Abu Talip (PW9) "had taken some more infamous part in the transaction" and so they were not protected by s. 18 of the Act. I express no opinion on the finding of the learned President but to deal with the appeal on the assumption that Mohamad Zakaria (PW1) and Abu Talip (PW9) were witnesses unworthy of credit as found by the learned President.

In the last paragraph of p. 82 of the Appeal Record, continued to p. 83, the learned President said -

> ... I found PW1 (Mohamad Zakaria) to be an accomplice as it was he who first made an offer of a bribe to the accused (the appellant) so that the accused would release him from arrest for possession of heroin. Furthermore on 22 December 1975 when the accused offered to solve his problem with regards to the charge for the sum of RM300/- he willingly agreed and made 2 advances. In my view he was not protected by s. 18 of the Prevention of Corruption Act. I have scrutinized his evidence very carefully and I found him to be a reliable and truthful witness. I was aware that his evidence was not corroborated (as an accomplice cannot corroborate another accomplice) and of the dangers of accepting the uncorroborated evidence of an accomplice. Nevertheless after warning myself of the dangers of accepting the uncorroborated evidence of an accomplice, I accepted his evidence on material particulars against the accused. I was convinced that he was telling the truth...

As to Abu Bakar Sidek (PW3) and Abu Talip (PW9) the learned President at pp. 83 and 84 of the Appeal Record stated -

> I have treated PW3 and PW9 as accomplices. Both PW3 and PW9 knew of the reason why the money was to be handed to the accused. They were fully aware of the facts that it was to be payment of part of the bribe. They went along with it. PW9 even lent PW1 RM40 and he himself paid the money to the accused on behalf of PW1. Like PW1, PW9 is also not protected by s. 18 of the Act but PW3 cannot be treated in the same way...
>
> With regard to PW3's evidence I cannot say that he was an interested party. He knew the facts and circumstances of the case. He was a friend of both the accused and PW1. He happened to be in the car and witnessed the handing over of the money because he was going to Kuala Lumpur that night and since his house was along the way he came along to fetch a suit-case. I found PW3 to be a reliable and truthful witness. I accepted his evidence on material particulars against the accused. In particular I accepted his evidence that he saw PW9 handed over RM40 on behalf of PW1 to the accused in the car as part payment of bribe of RM300.

In his grounds of judgment it is clearly shown that the learned President scrutinized the credibility of PW1, PW3 and PW9. The learned President was in no doubt that these witnesses were accomplices in the **normal sense** and examined their evidence with all the care appropriate to their position as such.

On the evidence of accomplices and the need for corroboration the Federal Court in *Yap Ee Kong & Anor. v. Public Prosecutor* [1981] 1 MLJ 144 held -

...It is trite law that although an accomplice is a competent witness a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. All leading authorities have stated in clear terms that it has long been a rule of practice or rule of prudence which has become virtually equivalent to a rule of law for the judge or jury to be warned of the danger of convicting on the uncorroborated testimony of an accomplice. It is a matter of prudence except where circumstances make it safe to dispense with it that there must be corroboration of the evidence of an accomplice. In the much quoted case of *R. v. Baskerville* Lord Reading CJ speaking of the rule of practice accepted 'as virtually equivalent to a rule of law' requiring corroboration in this type of cases said:

> If after the proper caution by the judge the jury nevertheless convict the prisoners, this Court will not quash the conviction merely on the ground that the accomplice's testimony was uncorroborated... In considering whether or not the conviction should stand, this Court will review all the facts of the case, and will bear in mind that the, jury had the opportunity of hearing and seeing the witnesses when giving their testimony. But this Court, in the exercise of its powers will quash a conviction even when the Judge has given to the jury the warning or advice above mentioned if this Court, **after considering all the circumstances of the case, thinks the verdict unreasonable or that it cannot be supported having regard to the evidence.'**

The learned President, as shown earlier, had treated Mohamad Zakaria as an accomplice and he had scrutinized again the evidence adduced by Mohamad Zakaria carefully. The learned President had found Mohamad Zakaria a truthful and reliable witness and he had warned himself of the dangers of accepting the evidence of Mohamad Zakaria without corroboration. I too have to examine the evidence of all the witnesses as a whole and to determine whether or not there was any corroboration evidence to substantiate the evidence of Mohamad Zakaria and if there was none whether "after considering all the circumstances of the case, (I think) the verdict unreasonable in that it cannot be supported having regard to the evidence."

In the light of s. 18 of the Act, the learned President held -

> ... Like PW1, PW9 is also not protected by s. 18 of the Act but PW3 cannot be treated in the same way...

In my judgment, I have no doubt at all that the learned President was of the view that Abu Bakar Sidek (PW3) could not be presumed to be unworthy of credit merely on the ground that he was present when the sum of RM40 was handed by Abu Talip (PW9) to the appellant in the car and that Abu Bakar Sidek (PW3) was requested by the appellant to convey the message to PW1 about the demand for RM300 to settle the arrest case. The learned President treated Abu Baker Sidek as a witness who was worthy of credit. I am of the view that Abu Bakar Sidek is not an accomplice. In the circumstances, as regards the payment of RM40/- to and acceptance thereto by the appellant as part payment of the RM300 demanded, Abu Bakar Sidek, being a witness worthy of credit in effect corroborated the evidence of Mohamad Zakaria and Abu Talip who were treated by the learned President as witnesses unworthy of credit. Hence it is not correct to say that Mohamad Zakaria's evidence was not corroborated in this respect.

On being arrested RM60 in marked notes were recovered by BSN officers from the appellant. Mohamad Zakaria testified that he gave the said sum to the appellant who put it into his trouser pocket. The recovery of the said sum on the appellant indeed corroborated the evidence of Mohamad Zakaria with regard to the passing of the sum to the appellant's possession. Though Mohamad Zakaria was not protected by s. 18 of the Act, that is to say,

that Mohamad Zakaria was presumed to be witness unworthy of credit, his evidence was corroborated and substantiated by the finding of the marked notes on the person of the appellant.

To rebut the allegation of Mohamad Zakaria and the presumption under s. 14 of the Act that the marked notes amounting to RM60 were received corruptly the appellant contended that the marked notes were thrusted into his trouser pocket by Mohamad Zakaria. The learned President having examined in detail the evidence of witnesses and the surrounding circumstances, rejected the appellant's contention. The learned President concluded that the appellant had failed on the balance of probability to rebut the presumption. With regard to this finding, I have no reason to disagree.

Next the learned Counsel for the appellant complained that the learned President had failed to consider adequately the case for the defence. I disagree. The learned President devoted not less than 5 foolscap typewritten pages of his grounds of judgment in dealing with the appellant's evidence in the light of the whole evidence of the defence and having weighted the evidence of the defence in the light of the evidence as a whole, the learned President concluded -

> Having considered the defence in the light of all the evidence adduced before me in its entity (sic) and submissions made by both parties I found that the defence had failed to rebut the presumption under s. 14 of the Prevention of Corruption Act 1961 on the balance of probabilities (see *PP v. Yuvaraj* [1968] 1 MLJ 238). I doubt that the defence had not raised any reasonable doubt as to the truth of the prosecution case or the accused's own guilt in respect of both amended charges. I was satisfied that the prosecution had proved the 2 charges beyond any reasonable doubt...

On the above grounds I found that there is no merit in this appeal as I find that the learned President had not committed any error of law nor had he misdirected himself on the question of fact.

Also found at [1982] CLJ 111